

HONORABLE SHIRA A. SCHEINDLIN
SUGGESTED RULES OF DISCOVERY PRACTICE

A. Depositions

1. Place of Depositions

Where a party anticipates difficulties in taking a deposition, its attorney may schedule it to take place at the courthouse, consistent with available space.

2. Non-Stenographic Recording of Depositions

Attorneys should freely stipulate to videotape depositions, so long as videotaping is not more expensive than a stenographic transcription for the party not requesting it.

3. Length and Number of Depositions

Each deposition shall be limited to no more than two working days for direct examination, plus a reasonable amount of time for cross-examination, unless the parties stipulate otherwise or a party obtains leave of the court. The number of depositions taken may be limited by stipulation or at a discovery conference called pursuant to Fed.R.Civ.P. 26(f).

4. Directions Not To Answer

Directions to a witness not to answer questions should be limited to four instances: (1) The question seeks privileged information; (2) the question is posed for the purpose of harassment; (3) the question is clearly irrelevant and there is the likelihood of substantial prejudice to the witness or a party; or (4) the question seeks confidential business information or trade secrets. Directions not to answer are presumptively improper and any misuse or overuse should result in sanctions.

5. Suggestive Objections

Suggestive objections should not be made and continued suggestive objections are grounds for sanctions by the court. Objections should generally be limited to the statement "objection as to form and the basis for such objection, i.e., compound question" or a direction not to answer as set forth in Rule 4 above.

6. Conferences Between Deponent and Defending Attorney

Attorney-witness conferences should be kept to a minimum. The defending attorney should not initiate a conference during the

pendency of a question except to determine whether a privilege should be asserted. Attorney-initiated conferences for any other purpose during the pendency of a question are presumptively improper and continued conferences are sanctionable. A deponent may seek the counsel of his or her attorney at any time.

7. Document Production at Depositions

Consistent with the requirements of Fed.R.Civ.P. 30 and 34, a party seeking production of documents in connection with a deposition should schedule the deposition to allow for the production of the documents in advance of the deposition. If requested documents which are discoverable are not produced prior to the deposition, the party noticing the deposition may either adjourn the deposition until after such documents are produced or, without waiving the right to have access to the documents, may proceed with the deposition, reserving the right to continue the deposition at a later date, at which time the questioning would be restricted to the document at issue and issues raised by it.

8. Correcting Deposition Transcripts

Deposition transcripts may be changed (1) when the transcript is an incorrect reporting of what was said or (2) when, although the transcript is correct, the witness's current recollection is different from what it was during the deposition. No changes should be made on the transcript itself; all changes should be affixed to the end of the transcript in the form of an affidavit of the deponent setting forth each change and the reason for it. The original transcript remains part of the record of the litigation.

9. Costs and Expenses

The court shall impose appropriate sanctions to enforce these rules pursuant to Fed.R.Civ.P. 26 and Fed.R.Civ.P. 37(a)(4) and 37(b), especially for continued improper deposition behavior.

10. Purpose

These Deposition Rules are adopted in order to more effectively and economically achieve the truth seeking process anticipated in the Federal Rules of Civil Procedure and should be interpreted in a common sense manner to effectuate that purpose.

B. Document Production

1. Redaction

If any material in documents produced is redacted because it is not responsive to any request, is withheld due to a claim of privilege, is responsive to a request but is withheld on grounds other than privilege, or is withheld pursuant to a protective order, the person producing the redacted documents shall indicate either on the document itself or on an accompanying attachment:

- (a) How many lines have been redacted and where on the page such redaction begins and ends;
- (b) The basis for the redaction[s];
- (c) The basis for any claim of privilege, pursuant to Fed.R.Civ.P. 26(b)(5), along with a description of the substance of the privileged material;
- (d) The basis for the redaction and the request to which it relates if the material redacted is responsive to a request, but is withheld on grounds other than a claim of privilege (such as relevance).

2. Timing

Parties are expected to respond to document requests promptly and thoroughly. In no event is dissatisfaction with an opposing party's document requests an excuse to delay the production of documents.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
Plaintiff, :
:
-against- : JOINT PRETRIAL ORDER
:
Defendant. : CIV. (SAS)
:
-----x

Scheindlin, District Judge:

Having conferred among themselves and with the Court pursuant to Rule 16, Fed.R.Civ.P., the parties adopt the following statements, directions and agreements as the Pretrial Order:

1. TRIAL COUNSEL: [List the names, addresses, and telephone numbers of the counsel who will try the case for the respective parties.]

2. NATURE OF ACTION AND JURISDICTION/VENUE: [State succinctly the nature of the case, the claimed statutory bases of federal jurisdiction and venue, and whether there is any dispute concerning jurisdiction or venue.]

3. JURY/NON-JURY:

4. AMENDMENTS/DISMISSALS: [Set forth any requested amendments to pleadings, dismissals of the case as to any unserved parties, additions or substitutions of parties, or disposition as to defaulting parties. Proposed amendments should include the basis for the amendment, the reason why the amendment is being raised at this time, and any objections.]

5. UNDISPUTED FACTS: [State those facts which are stipulated to be true and as to which proof is accordingly unnecessary. If counsel so directs, such stipulation may contain the reservation that there is no concession as to the materiality or relevance of those facts.]

6. CONTENTIONS OF THE PARTIES: [State separately the contentions of the parties, including contentions by and against impleaded parties. Include all claims for damages, if any, claimed by each party involved in the case and the kind and general terms of any other relief prayed by each.]

7. ISSUES OF LAW: [State the ultimate issues of law in the case, preferably in the form of a joint statement. Should the parties find themselves unable to agree on a joint statement, each

party may then set forth a separate statement of the legal issues as perceived by that party.]

8. SEPARATE TRIAL OF ISSUES: [State whether a separate trial of any of the issues is (a) feasible and (b) advisable.]

9. LISTS OF PROSPECTIVE WITNESSES: [Prepare a separate list of all prospective witnesses, other than expert witnesses, that each party expects to call in person or through deposition. This does not include witnesses that a party may call only for impeachment or rebuttal. If any additional witnesses come to the attention of counsel prior to the trial, a supplemental list must be prepared and filed with the court and notice must be given to the opposing side. This supplemental list must include the reason the witness' name was not set forth in the Pretrial Order.]

10. EXPERT WITNESSES: [List any stipulations relating to the number or nature of experts to be called by parties or the Court, and provide a brief summary of each expert's proposed testimony, consistent with the provisions of Rule 26(a)(2)(B), Fed.R.Civ.P.]

11. EXHIBITS: [List (i) plaintiff's proposed trial exhibits; (ii) defendant's proposed trial exhibits; and (iii) any other party's proposed trial exhibits, including depositions (with reference to date and page number of transcripts), answers to interrogatories, and responses to requests for admissions. Do not include trial exhibits which are only to be used for impeachment or rebuttal. Exhibits shall be given a proposed designation (numbers for plaintiff; letters for defendant; initials to be added if there are multiple plaintiffs or defendants).

Next to each exhibit not stipulated to be admissible, the opponent shall state briefly the basis of the objection (e.g., "authentication," "hearsay") and provide a reference to the specific Rule of Evidence upon which the opponent is relying. Only the grounds listed will be considered at trial and all other objections shall be deemed waived. In advance of each trial session, counsel for the party going forward at that session should show opposing counsel the exhibits s/he intends to introduce at the session. If possible, the court will rule on the objection then, eliminating the necessity for a sidebar conference when the exhibit is offered. Exhibits to which there is no objection will be listed as marked in evidence, subject to the Court's approval.

At the beginning of trial, a complete set of documentary exhibits should be provided to the Court for use during trial, unless the Court excuses a party from this requirement. All exhibits should be marked prior to introduction, as no trial time

will be used for this purpose.

Include the following paragraph if applicable: "Copies of hospital records may be offered into evidence if authenticated by a letter or other certificate which purports to be that of the custodian of the records who certifies that the copy is true and complete. More formal proof of the authenticity of the records is waived."]

12. SUBSEQUENT AMENDMENT OF WITNESS OR EXHIBITS LISTS: [Include the following language: "Absent the subsequent consent of all the parties hereto, or the issuance of a subsequent Order by this Court so permitting, no witnesses or exhibits shall be presented at the trial of this case other than those listed in paragraphs 9, 10 and 11 hereof."]

13. ESTIMATE OF TRIAL TIME: [Make a careful estimate of the number of court trial days required for a presentation of each party's case.]

14. PREVIOUS SUBSTANTIVE MOTIONS: [List all previous motions to dismiss, for summary judgement, for separate trial of issues, for consolidation of cases, for change of venue, or for pendente lite relief and indicate the disposition or status thereof.]

15. REQUESTED EVIDENTIARY RULINGS:

16. JURY VERDICT: [Include the following language, if applicable: "Pursuant to Rule 48, Fed.R.Civ.P., the parties have stipulated and agreed that a verdict or a finding by ____ [indicate 4, 5, 6, or all] of the jurors comprising the jury shall be taken as the verdict or finding of the jury."]

17. VOIR DIRE QUESTIONS, REQUESTS TO CHARGE, AND TRIAL MEMORANDUM OF LAW IN A JURY TRIAL: [As required by this Court's Individual Rules of Practice, each party must also submit i) its Requests for Voir Dire questions to be asked of prospective jurors; ii) its Requests to Charge; and iii) a Trial Memorandum of Law addressed to each issue of law that the party expects to arise at trial. These documents must be submitted simultaneously with the Joint Pretrial Order and should also be submitted, when it is feasible to do so, on an IBM MS-DOS 3 1/2" inch diskette in WordPerfect 5.1 format.

Include the following language: "IT IS FURTHER ORDERED that any objections to another party's Voir Dire questions or Requests to Charge, and any memorandum in opposition to another party's Trial Memorandum of Law shall be submitted to the Court no

later than one week following the date of this Pretrial Order. Objections to Voir Dire questions or Requests to Charge, which must include citation to authority, may be penned in the margin of a copy of the adversary's Requests."]

18. TRIAL MEMORANDUM OF LAW AND PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW IN A NON-JURY TRIAL: [As required by this Court's Individual Rules of Practice, each party must also submit a Trial Memorandum of Law addressed to each issue of law that the party expects to arise at trial and Proposed Findings of Fact and Conclusions of Law. These documents must be submitted simultaneously with the Joint Pretrial Order and should also be submitted, when it is feasible to do so, on an IBM MS-DOS 3 1/2" inch diskette in WordPerfect 5.1 format.]

SO ORDERED:

Dated: New York, New York

SHIRA A. SCHEINDLIN
United States District Judge

CONSENTED TO:

Attorney for Plaintiff

Attorney for Defendant

Attorney for

Attorney for

HONORABLE SHIRA A. SCHEINDLIN
CONDUCT OF COUNSEL AT TRIAL

When appearing in this Court, unless excused by the Court, all counsel shall (including, where the context applies, all persons at counsel table):

1. Stand as Court is opened, recessed or adjourned.
2. Stand when addressing, or being addressed by the Court.
3. Stand at the lectern while examining any witness; except that counsel may approach the Clerk's desk or the witness for purposes of handling or tendering exhibits. Do not introduce yourself to adverse witnesses. Commence your cross-examination without preliminaries.
4. Address all remarks to the Court, not to opposing counsel.
5. Avoid disparaging personal remarks or acrimony toward opposing counsel and remain wholly detached from any ill feeling between the litigants or witnesses.
6. Refer to all persons, including witnesses, other counsel and parties by their surnames and not by their first or given names.
7. Only one attorney for each party shall examine, or cross examine each witness. The attorney stating objections, if any, during direct examination, shall be the attorney recognized for cross examination.
8. Counsel should request permission before approaching the bench; and any document counsel wish to have the Court examine should be handed to the Clerk.
9. Any exhibit offered in evidence should, at the time of such offer, be handed to opposing counsel. At the end of trial, counsel should make sure they have all of their exhibits. The Clerk is not responsible for them.
10. If you intend to question a witness about a

group of documents, avoid delay by having all of the documents with you when you start the examination.

11. In making objections counsel should state only the legal grounds for the objection and should withhold all further comment or argument unless elaboration is requested by the Court.
12. In examining a witness counsel shall not repeat or echo the answer given by the witness.
13. Offers of, or requests for, a stipulation should be made privately, not within the hearing of the jury.
14. In opening statements and in argument to the jury, counsel shall not express personal knowledge or opinion concerning any matter in issue.
15. Counsel shall admonish all persons at counsel table that gestures, facial expressions, audible comments, or the like, as manifestations of approval or disapproval during the testimony of witnesses, or at any other time, are absolutely prohibited.
16. Sidebar conferences will be kept to a minimum. This Court agrees with Standard 5.9 of the Standards suggested by the American Bar Association Advisory Committee on the Judge's Function (1972):

The trial judge should be alert to the distracting effect on the jury during the taking of evidence of frequent bench conferences between counsel and the judge out of the hearing of the jury, and should postpone the requested conference to the next recess except when an immediate conference appears necessary to avoid prejudice.

**INSTRUCTIONS FOR
FILING RICO STATEMENT**

All parties asserting claims pursuant to the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961, must file and serve upon the opposing party a RICO Statement in the following form within twenty days of filing the pleading asserting the RICO claim.

The RICO Statement shall include the facts the party is relying upon to assert the RICO claim as a result of the "reasonable inquiry" required by Fed. R. Civ. P. 11. The Statement shall be in a form that uses the numbers and letters set forth below, and shall state the following information in detail.

1. State whether the alleged unlawful conduct is in violation of 18 U.S.C. §§ 1962(a), (b), (c), and/or (d).
2. List each defendant and state the alleged misconduct and basis of liability of each defendant.
3. List the alleged wrongdoers, other than the defendants, and state the misconduct of each wrongdoer.
4. List the alleged victims and state how each victim was allegedly injured.
5. Describe in detail the pattern of racketeering activity or collection of unlawful debts alleged for each RICO claim. The description of the pattern of racketeering shall include the following information:
 - (a) List the alleged predicate acts and the specific

statutes that were allegedly violated;

(b) Provide the dates of, the participants in, and a description of the facts surrounding the predicate acts;

(c) If the RICO claim is based on the predicate offenses of wire fraud, mail fraud, or fraud in the sale of securities, the "circumstances constituting fraud or mistake shall be stated with particularity." Fed. R. Civ. P. 9(b). Identify the time, place and contents of the alleged misrepresentations, and the identity of persons to whom and by whom the alleged misrepresentations were made;

(d) State whether a predicate act is based upon a criminal conviction;

(e) State whether civil litigation has resulted in a judgment with regard to the predicate acts;

(f) Describe how the predicate acts form a "pattern of racketeering activity"; and

(g) State whether the alleged predicate acts relate to each other as part of a common plan. If so, describe in detail.

6. Describe in detail the alleged enterprise for each RICO claim. A description of the enterprise shall include the following information:

(a) State the names of the individuals, partnerships, corporations, associations, or other legal entities that allegedly constitute the enterprise;

(b) Describe the purpose of the enterprise;

(c) State whether any defendants are employees,

officers or directors of the alleged enterprise;

(d) State whether any defendants are associated with the alleged enterprise;

(e) State whether you are alleging that the defendants are individuals or entities separate from the alleged enterprise, or that the defendants are the enterprise itself, or members of the enterprise; and

(f) If any defendants are alleged to be the enterprise itself, or members of the enterprise, explain whether such defendants are perpetrators, passive instruments, or victims of the alleged racketeering activity.

7. State and describe in detail whether you are alleging that the pattern of racketeering activity and the enterprise are separate or have merged into one entity.

8. Describe the alleged relationship between the activities of the enterprise and the pattern of racketeering activity. Discuss how the racketeering activity differs from the usual and daily activities of the enterprise, if at all.

9. Describe what benefits, if any, the alleged enterprise receives from the alleged pattern of racketeering.

10. Describe the effect of the activities of the enterprise on interstate or foreign commerce.

11. If the complaint alleges a violation of 18 U.S.C. § 1962(a), provide the following information:

(a) State who received the income derived from the pattern of racketeering activity or through the collection of an

unlawful debt; and

(b) Describe the use or investment of such income.

12. If the complaint alleges a violation of 18 U.S.C. § 1962(b), describe in detail the acquisition or maintenance of any interest in or control of the alleged enterprise.

13. If the complaint alleges a violation of 18 U.S.C. § 1962(c):

(a) State who is employed by or associated with the enterprise; and

(b) State whether the same entity is both the liable "person" and the "enterprise" under § 1962(c).

14. If the complaint alleges a violation of 18 U.S.C. § 1962(d), describe in detail the alleged conspiracy.

15. Describe the alleged injury to business or property.

16. Describe the direct causal relationship between the alleged injury and the violation of the RICO statute.

17. List the damages sustained for which each defendant is allegedly liable.

18. List all pendent state claims, if any.

